

5468

2015-2016 Regular Sessions

I N A S S E M B L Y

February 24, 2015

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to on duty auxiliary police officers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 10.00 of the penal law is amended by adding a new
2 subdivision 22 to read as follows:

3 22. "ON-DUTY AUXILIARY POLICE OFFICER" MEANS A MEMBER OF AN AUXILIARY
4 POLICE PROGRAM THAT IS ORGANIZED AND MAINTAINED BY A STATE OR LOCAL
5 POLICE DEPARTMENT WHO IS ACTING AS AN AUXILIARY POLICE OFFICER AT THE
6 TIME OF THE ACT OR OMISSION.

7 S 2. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
8 penal law, as amended by chapter 1 of the laws of 2013, are amended to
9 read as follows:

10 (b) Class C violent felony offenses: an attempt to commit any of the
11 class B felonies set forth in paragraph (a) of this subdivision; aggra-
12 vated criminally negligent homicide as defined in section 125.11, aggra-
13 vated manslaughter in the second degree as defined in section 125.21,
14 aggravated sexual abuse in the second degree as defined in section
15 130.67, assault on a peace officer, police officer, fireman or emergency
16 medical services professional as defined in section 120.08, ASSAULT ON
17 AN ON-DUTY AUXILIARY POLICE OFFICER AS DEFINED IN SECTION 120.08-A,
18 assault on a judge as defined in section 120.09, gang assault in the
19 second degree as defined in section 120.06, strangulation in the first
20 degree as defined in section 121.13, burglary in the second degree as
21 defined in section 140.25, robbery in the second degree as defined in
22 section 160.10, criminal possession of a weapon in the second degree as
23 defined in section 265.03, criminal use of a firearm in the second
24 degree as defined in section 265.08, criminal sale of a firearm in the
25 second degree as defined in section 265.12, criminal sale of a firearm

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 with the aid of a minor as defined in section 265.14, aggravated criminal
2 possession of a weapon as defined in section 265.19, soliciting or
3 providing support for an act of terrorism in the first degree as defined
4 in section 490.15, hindering prosecution of terrorism in the second
5 degree as defined in section 490.30, and criminal possession of a chemical
6 weapon or biological weapon in the third degree as defined in
7 section 490.37.

8 (c) Class D violent felony offenses: an attempt to commit any of the
9 class C felonies set forth in paragraph (b); reckless assault of a child
10 as defined in section 120.02, assault in the second degree as defined in
11 section 120.05, menacing a police officer or peace officer as defined in
12 section 120.18, MENACING AN ON-DUTY AUXILIARY POLICE OFFICER AS DEFINED
13 IN SECTION 120.19, stalking in the first degree, as defined in subdivision
14 one of section 120.60, strangulation in the second degree as defined in
15 section 121.12, rape in the second degree as defined in
16 section 130.30, criminal sexual act in the second degree as defined in
17 section 130.45, sexual abuse in the first degree as defined in section
18 130.65, course of sexual conduct against a child in the second degree as
19 defined in section 130.80, aggravated sexual abuse in the third degree
20 as defined in section 130.66, facilitating a sex offense with a
21 controlled substance as defined in section 130.90, criminal possession
22 of a weapon in the third degree as defined in subdivision five, six,
23 seven, eight, nine or ten of section 265.02, criminal sale of a firearm
24 in the third degree as defined in section 265.11, intimidating a victim
25 or witness in the second degree as defined in section 215.16, soliciting
26 or providing support for an act of terrorism in the second degree as
27 defined in section 490.10, and making a terroristic threat as defined in
28 section 490.20, falsely reporting an incident in the first degree as
29 defined in section 240.60, placing a false bomb or hazardous substance
30 in the first degree as defined in section 240.62, placing a false bomb
31 or hazardous substance in a sports stadium or arena, mass transportation
32 facility or enclosed shopping mall as defined in section 240.63, and
33 aggravated unpermitted use of indoor pyrotechnics in the first degree as
34 defined in section 405.18.

35 S 3. Subdivisions 11-b and 12 of section 120.05 of the penal law,
36 subdivision 11-b as added by chapter 197 of the laws of 2014 and subdivision
37 12 as added by chapter 68 of the laws of 2008, are amended and a
38 new subdivision 13 is added to read as follows:

39 11-b. With intent to cause physical injury to an employee of the New
40 York city housing authority performing his or her lawful duties while
41 located on housing project grounds, real property, or a building owned,
42 managed, or operated by such authority he or she causes physical injury
43 to such employee; [or]

44 12. With intent to cause physical injury to a person who is sixty-five
45 years of age or older, he or she causes such injury to such person, and
46 the actor is more than ten years younger than such person[.]; OR

47 13. WITH THE INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER
48 FROM PERFORMING A LAWFUL DUTY, BY MEANS INCLUDING RELEASING OR FAILING
49 TO CONTROL AN ANIMAL UNDER CIRCUMSTANCES EVINCING THE ACTOR'S INTENT
50 THAT THE ANIMAL OBSTRUCT THE LAWFUL ACTIVITY OF SUCH ON-DUTY AUXILIARY
51 POLICE OFFICER, HE OR SHE CAUSES PHYSICAL INJURY TO SUCH ON-DUTY AUXIL-
52 IARY POLICE OFFICER.

53 S 4. The penal law is amended by adding a new section 120.08-a to read
54 as follows:

55 S 120.08-A ASSAULT ON AN ON-DUTY AUXILIARY OFFICER.

1 A PERSON IS GUILTY OF ASSAULT ON AN ON-DUTY AUXILIARY POLICE OFFICER
2 WHEN, WITH INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER FROM
3 PERFORMING A LAWFUL DUTY, HE OR SHE CAUSES SERIOUS PHYSICAL INJURY TO
4 SUCH AN ON-DUTY AUXILIARY POLICE OFFICER.

5 ASSAULT ON AN ON-DUTY AUXILIARY POLICE OFFICER IS A CLASS C FELONY.

6 S 5. Section 120.13 of the penal law, as amended by chapter 765 of the
7 laws of 2005, is amended to read as follows:

8 S 120.13 Menacing in the first degree.

9 A person is guilty of menacing in the first degree when he or she
10 commits the crime of menacing in the second degree and has been previ-
11 ously convicted of the crime of menacing in the second degree or the
12 crime of menacing a police officer or peace officer, OR THE CRIME OF
13 MENACING AN ON-DUTY AUXILIARY POLICE OFFICER within the preceding ten
14 years.

15 Menacing in the first degree is a class E felony.

16 S 6. The penal law is amended by adding a new section 120.19 to read
17 as follows:

18 S 120.19 MENACING AN ON-DUTY AUXILIARY POLICE OFFICER.

19 A PERSON IS GUILTY OF MENACING AN ON-DUTY AUXILIARY POLICE OFFICER
20 WHEN HE OR SHE INTENTIONALLY PLACES OR ATTEMPTS TO PLACE AN ON-DUTY
21 AUXILIARY POLICE OFFICER IN REASONABLE FEAR OF PHYSICAL INJURY, SERIOUS
22 PHYSICAL INJURY OR DEATH BY DISPLAYING A DEADLY WEAPON, KNIFE, PISTOL,
23 REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM, WHETHER OPERABLE
24 OR NOT, WHERE SUCH OFFICER WAS IN THE COURSE OF PERFORMING HIS OR HER
25 OFFICIAL DUTIES AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN
26 THAT SUCH VICTIM WAS AN ON-DUTY AUXILIARY POLICE OFFICER.

27 MENACING AN ON-DUTY POLICE OFFICER IS A CLASS D FELONY.

28 S 7. The penal law is amended by adding a new section 195.09 to read
29 as follows:

30 S 195.09 OBSTRUCTING THE DUTIES OF AN ON-DUTY AUXILIARY POLICE OFFICER
31 BY MEANS OF A SELF-DEFENSE SPRAY DEVICE.

32 A PERSON IS GUILTY OF OBSTRUCTING THE DUTIES OF AN ON-DUTY AUXILIARY
33 POLICE OFFICER BY MEANS OF A SELF-DEFENSE SPRAY DEVICE WHEN, WITH THE
34 INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER FROM PERFORMING A
35 LAWFUL DUTY, HE OR SHE CAUSES TEMPORARY PHYSICAL IMPAIRMENT TO AN
36 ON-DUTY AUXILIARY POLICE OFFICER BY INTENTIONALLY DISCHARGING A SELF-DE-
37 FENSE SPRAY DEVICE, AS DEFINED IN PARAGRAPH FOURTEEN OF SUBDIVISION A OF
38 SECTION 265.20 OF THIS CHAPTER, THEREBY CAUSING SUCH TEMPORARY PHYSICAL
39 IMPAIRMENT.

40 OBSTRUCTING THE DUTIES OF AN ON-DUTY AUXILIARY POLICE OFFICER BY MEANS
41 OF A SELF-DEFENSE SPRAY DEVICE IS A CLASS D FELONY.

42 S 8. This act shall take effect on the first of November next succeed-
43 ing the date on which it shall have become a law.